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12 clients to commit criminal acts of infringements.

13 Q I'm only asking for who, okay. Can you just
14 list who you think?

15 A I don't want to get into a debate with you
16 'cause we'll take off and we'll be here for ten
17 hours. But you changed the question on me there
18 twice.

19 Q The question is who owes you money?

20 A Okay, I told you. All the people in the
21 litigation and the people in -- I believe the
22 attorneys who have performed badly in the
23 litigations.

24 Q Okay.

25 A That's a nice way to put it if you

40

1 understand me.

2 Q All I'm asking for is for you to say what
3 you mean by the litigation.

4 A I'm talking about if we can call Berry One
5 and Berry Two. First one Berry vs. Fleming. Second,
6 Berry vs. Hawaiian Express, et al. And the third one
7 with the lenders that's a whole thing by itself and
8 it's probably going to be -- we'll see what happens
9 with that.

10 Q Okay. Other than the lawyers who represent
11 defendants in those cases, is there anybody else that
12 you think owes you money?

13 MR. HOGAN: I'm going to object. It's vague
14 if you mean others and you're not including the
15 defendants as well.

16 MR. SMITH: Fair enough.

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17 Q (By Mr. Smith) Other than everybody you've
18 identified up to now?

19 A Well, probably the largest claim someone
20 owes me money is the United States Government.

21 Q Okay. Anybody else?

22 A No. I think they'll take care of the other
23 people. They'll collect it from others.

24 Q What about do you believe you have any
25 claims against a lawyer other than the lawyers who

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1 represented the defendants in the litigation that
2 you've already described?

3 A Yes.

4 Q Who?

5 A Well, I can think off the top of my head is
6 probably Roger Fulgrum at Baker Botts.

7 Q Anybody else?

8 A Brad Beuhler but I don't think he's an
9 attorney.

10 Q Brad, what's his last name?

11 A He's your friend. You should know it.
12 Buehler, B-u-e-h-l-e-r or something like that.

13 Q Anybody else?

14 A Probably others but I have to sit and think
15 about it a while.

16 Q As you sit here today, are you able to think
17 of any others that you -- any other lawyers that you
18 think you have claims against other than what I've
19 listed or what you've listed so far?

20 A There's others but I can't remember their

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21 names. I know one is at Sonnenschein who advised the
22 PTC or I guess it was in Fleming, the -- what do they
23 call that when they've got the board of directors
24 and -- audit committee, audit committee. Advised the
25 audit committee it was okay for him to start wiping

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1 computer files and records in the phase of the air
2 defense with the FCC. He's the one that helped
3 Guidance --

4 Q Alright. We didn't ask you that question.

5 A Yes, you did.

6 Q I think you mentioned Sonnenschein and
7 that's fine. If you can only name the firm and not
8 the individual lawyer, that's fine. Any other
9 lawyers or law firms that you believe owe you money
10 other than the ones you've named so far?

11 A Lynch Ichida, Mr. Hogan's old firm.

12 Q Any other lawyers or law firms that you
13 believe owe you money other than the ones you've
14 listed so far?

15 A There may be some but not to a point where I
16 can pursue them yet.

17 Q Regardless of whether you're going to pursue
18 the claim, what other lawyers or law firms do you
19 believe --

20 A I can't remember offhand.

21 Q As you sit here today, you can't think of
22 any others?

23 A There's others but I can't think of the
24 names. And you don't like my stories describing it
25 so I don't know what to tell you.

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1 Q Are they Hawaii law firms or located
2 somewhere else?

3 A I don't know.

4 Q Okay. Item 11 on the list. Check stubs,
5 have you produced any check stubs?

6 A I don't have any.

7 Q Cancelled checks, have you produced any
8 cancelled checks?

9 A I don't have any.

10 Q Ledgers, have you produced any ledgers?

11 A I don't have any.

12 Q Other documentation illustrating any wage,
13 salary or other forms of compensation you have
14 received in the past five years?

15 A I produced everything I have.

16 Q And what is that? You produced the contract
17 with Hawaiian or with Y. Hata. Have you produced
18 anything else within the description of number 11 on
19 this list?

20 A No. The only thing I can think that could
21 have been in there could have been some 1099 or
22 something like that. And in moving and shuffling
23 boxes, I've looked, I can't find it. I know that
24 things were lost moving around so.

25 Q How does Y. Hata pay you?

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1 A By check.

2 Q They pay you with check?

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3 A Yes.

4 Q And do they mail that check somewhere?

5 A Yes.

6 Q Where do they mail it?

7 A To addresses in here. I guess it's not. I
8 think it's 5500 Military Trail and that's in Jupiter,
9 Florida and I think it's 33468.

10 MR. HOGAN: I'll state for the record that
11 in the Lynch Ichida withdrawal and substitution that
12 they filed recently in the case, they put that
13 address in and I believe it's in the record in the
14 case.

15 MR. SMITH: Okay. And is -- do you know if
16 the address he's given is the correct one he's --

17 MR. HOGAN: Well, Military Trail is what
18 rings a bell. I don't have it specifically committed
19 to memory.

20 Q (By Mr. Smith) Okay. What is 103 East
21 Thatch Palm Circle, Jupiter, Florida?

22 A That's a house address.

23 Q And who lives at that house?

24 A I do.

25 Q Anybody else?

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1 A Sally Apgar.

2 Q And I take it the Military Trail address is
3 not a house address?

4 A It's a street address. It's a UPS store.

5 Q Okay. And what do you do with the check
6 from Y. Hata when it arrives?

7 A I deposit it to the Bank Atlantic normally.

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8 Q Okay. Did Y. Hata pay by a check before you
9 lived in Florida?
10 A Yes.
11 Q And where did they mail the check?
12 A The Hawaii Kai address, the -- my P.O. Box
13 where the guy is no longer in business.
14 Q And what did you do with the check when you
15 received it there?
16 A Usually cash it.
17 Q Where did you go to cash it?
18 A I think maybe Bank of Hawaii. That's where
19 Y. Hata's account was and they would cash it for me.
20 Q The checks were drawn on Y. Hata and you
21 cashed them?
22 A Yes.
23 Q You didn't have an account that you
24 deposited them into the way you're doing now that you
25 live in Florida?

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1 A No.
2 Q And it's your sworn testimony you have no
3 record of any of those payments that you could have
4 produced today?
5 A Not that I could find, no.
6 Q How often does Y. Hata pay you?
7 A Over what period of time? I mean this last
8 recently?
9 Q Well, let's say in 2007, do you receive a
10 check once a month or --
11 A Once a month. Sometimes they skip a month.

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12 It varies.

13 Q What about in 2006?

14 A Same thing.

15 Q 2005?

16 A Pretty much consistently over the term of
17 the contract they pay monthly or sometime skip a
18 month or two but catch up.

19 Q The checks come monthly in general at least?

20 A In general.

21 Q Number 12. Pleadings containing the full
22 caption of any lawsuit that you've been a party to.
23 I notice you do have some captions in here. Have you
24 produced copies of the caption of any suit you've
25 been a party to in the last five years?

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1 A All the captions I had, yes.

2 Q Are there any suits that you have been a
3 party to in the last five years for which you have
4 not produced a caption today?

5 A Not that I'm aware of.

6 Q 12. Lease agreements or other contracts
7 providing for payment of any monetary sums.

8 A That's 13.

9 Q I'm sorry, 13. Lease agreements or other
10 contracts providing for payment of any monetary sums
11 to you from any individual or entity.

12 A I produced the Y. Hata contract. That's all
13 I could find to be responsive to that.

14 Q Okay. Are you aware of anything that's
15 responsive to this that you could not find a copy of?

16 A No.

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17 Q So it's your sworn testimony today that
18 there are no lease agreements or other contracts
19 providing for payments of any monetary sum to you
20 from any individual or entity other than Y. Hata?

21 A As long as we leave the definition of the
22 term contract does not include anything regarding the
23 lawsuits and all that stuff, yes.

24 Q 14. Qualified retirement plans in which you
25 have an interest or that have been adopted by your

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1 employer including but not limited to 401(k) plans
2 profit-sharing plans, pension plans and simplified
3 employee pension plans.

4 A No.

5 Q I take it then your answer to 15 is none?

6 A Correct.

7 Q Non-qualified deferred compensation plans?

8 A None.

9 Q 17. Stock certificates in corporations of
10 which you are a record holder of any stock.

11 A None.

12 Q What about Atlantic Pacific International,
13 Inc.?

14 A I think it's gone. I wouldn't consider that
15 an active company.

16 MR. HOGAN: I'll state for the record that
17 the official -- the original shares were given to the
18 U.S. Attorney's office. I delivered them the weekend
19 before Lokelani's trial and I had delivered them on a
20 Friday. I dropped a little box and if you want to

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21 get them, call the FBI. They have them.

22 Q (By Mr. Smith) Do you have an understanding
23 whether you are the owner of the shares of Atlantic
24 Pacific International, Inc.?

25 A I don't know how that works once

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1 everything -- company's done and gone. I don't know
2 if I could answer that one way or another.

3 Q Okay.

4 A I was at one time.

5 Q Does Atlantic Pacific International, Inc.
6 have any assets at the present time to your
7 knowledge?

8 A Not that I'm aware of.

9 Q You were a president and sole shareholder of
10 Atlantic Pacific International, Inc. at one time,
11 right?

12 A Yes.

13 Q Did anybody succeed you as president of
14 Atlantic Pacific International, Inc.?

15 A Not that I'm aware of.

16 Q 18. Balance sheets, income and expense
17 statements and other corporate documents of the
18 corporation in which you hold stock. I take it the
19 answer is no?

20 A Correct.

21 Q All -- 19. All documents indicating any
22 interest in which you may have or evidence of
23 ownership of any individual retirement account?

24 A None.

25 Q 20. Trust documents by which you have

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1 transferred money or property to any trust within the
2 last five years.

3 A None.

4 Q Have you transferred any property to a trust
5 in the last five years?

6 A No.

7 Q Do you have any individual retirement
8 accounts?

9 A No.

10 Q Did I -- do you have any deferred
11 compensation plans?

12 A No.

13 Q Do you have any 401(k) plans, pension plans
14 or simplified employee pension plans?

15 A No.

16 Q Are you a beneficiary of any trust?

17 A I don't think so.

18 Q Are there any -- are you aware of any trusts
19 that you might be a beneficiary of?

20 A The only reason I said I don't think so is I
21 know my father had a trust set up. He's passed away.
22 And there was the last documents I saw in the '90s I
23 was the executor and sole beneficiary. But I think
24 he probably changed that. I never saw the change.

25 Q Your father had a judgment against you at

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1 one time, right?

2 A Yes.

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3 Q what is the status of that judgment?

4 A Expired.

5 Q Since your father passed away, who became
6 the owner of that judgment?

7 A I have no idea.

8 MR. HOGAN: For what it's worth, it probably
9 could be him.

10 THE WITNESS: I may still be the trustee and
11 executor and sole beneficiary for all I know. No
12 one's told me.

13 Q (By Mr. Smith) You haven't heard anything
14 from the estate of your father after he passed away?

15 MR. HOGAN: That wasn't renewed within ten
16 years.

17 THE WITNESS: I've heard absolutely nothing.
18 No one notified me, nothing.

19 Q (By Mr. Smith) I'm not limiting the question
20 to the judgment now. I'm asking more generally
21 whether you heard anything from anyone on behalf of
22 your father's estate after he passed away.

23 A I've heard from no one regarding my father.
24 I had to find a death record on my own.

25 Q Other than your father's estate, are you

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1 aware of any other trusts in which you may have an
2 interest?

3 A I'm not aware of any, no.

4 Q Number 21. Documents reflecting transfer of
5 title of any assets by you in the last five years.

6 A To me or from me?

7 Q Question 21 is asking about transfers made
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8 from you to someone else.

9 A From me to someone else. No.

10 Q Okay. What about transfers of assets to you
11 from someone else?

12 A Is that one of the questions?

13 Q That's my question.

14 A Okay. You got the document too. The second
15 EULA addendum which I've filed with the United States
16 Copyright Office where Fleming transferred anything
17 they wrote regarding that freight control system to
18 me and I'm . . .

19 Q Okay.

20 MR. HOGAN: It's all the software your
21 client is using out there at Kapolei.

22 THE WITNESS: Right.

23 Q (By Mr. Smith) Okay. So that's a transfer
24 to you from somebody else?

25 A Yes.

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1 Q Is a Second EULA Addendum. Says the
2 document is entitled Second EULA Addendum so I'll
3 have no trouble finding it?

4 A Oh, I'm sure you can find it. It's -- we
5 jockey back and forth about the title but that's what
6 it is.

7 Q Okay. I think I know what you're talking
8 about. So that is the document that your testimony
9 is that transferred assets to you. Are you aware of
10 any other transfer of assets to you over the last
11 five years?

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12 A No, I didn't say it was transferred to me
13 over the last five years. That's a transfer to me of
14 1999 continuing to this day. And all I said was I
15 am -- I filed it. I don't know if it's recorded yet
16 with the United States Copyright Office just to be
17 clear.

18 Q Okay. My question is are you aware of any
19 other transfers of assets to you from somebody else
20 other than what you just described?

21 A No.

22 Q Where did you purchase -- well, we discussed
23 some firearms that you own, right?

24 A Yes.

25 Q Where did you acquire them?

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1 A In Hawaii.

2 Q And can you be more specific about where in
3 Hawaii you acquired them?

4 A I can't remember the gun store.

5 Q Where was it located?

6 A It seems like it was over in the Mapunapuna
7 area.

8 Q Okay. Do you have any records relating to
9 those weapons?

10 A I'm sure I do. And the other one was
11 acquired at a gun store. It used to be close to
12 Fisher. I think they went out of business.

13 Q How many firearms do you own?

14 A Three.

15 Q Can you list them please?

16 A A Benelli M90 and two H & K USP 45s.

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17 MR. HOGAN: Did your friends find another
18 trail to Mr. Berry's house, Lex?

19 Q (By Mr. Smith) The first one, does that
20 start with a B, Benelli?

21 A Yes.

22 Q How much did you pay for it?

23 A I don't recall.

24 Q What was the source of the money that you
25 used to pay for it?

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1 MR. HOGAN: I'm going to state for the
2 record that this has very little to do with a proper
3 judgment debtor examination.

4 I'll state for the record that there is a
5 series of time records where on a weekend in which
6 Mr. Berry's brother-in-law was assaulted in his house
7 in which we believe persons carrying firearms,
8 entered the State of Hawaii on a private jet and Mr.
9 Smith met with them and that he has time records were
10 excised in the first case for approximately \$4,000 of
11 time for the very days that these gentlemen were
12 here.

13 I believe these questions are being asked
14 for the purpose of advancing racketeering activities
15 that has occurred and will occur again in the State
16 of Hawaii. I believe it violates the Fair Debt
17 Collections Practices Act as well as the RICO Act.
18 And you can answer the question. And it's meant to
19 intimidate the witness.

20 Q (By Mr. Smith) The question was what was the

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21 source of the money you used to pay for the Benelli?

22 A I guess it's money I earned at API.

23 Q When did you buy the Benelli?

24 A Mid '90s somewhere.

25 Q Then you identified two H & K firearms.

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1 what was the date that you acquired those?

2 A I think it was shortly after you sent the
3 goons to my house. So what was that? You should
4 know.

5 Q Let me just state for the record that I deny
6 all of the accusations about me sending goons to your
7 house.

8 A Can we get your time records for these ten
9 days?

10 Q Just so that it's clear, I state for the
11 record that this is a bunch of hogwash --

12 A Can we get your missing --

13 Q Now, I ask the questions here. And the
14 question is when did you buy the H & K weapons?

15 A Shortly after -- I told you. Shortly after
16 that was November 2001. I don't remember exactly
17 when. Sometime after that.

18 Q And what was the source of the funds for
19 those weapons?

20 A I don't recall.

21 Q You said that the United States Government
22 owes you a lot of money. Could you please explain
23 what the government owes you money for?

24 A For using the freight control system that
25 you and Mr. Fulgrum got the copy from the United

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1 States Copyright Office without permission and used
2 it to verify KBR's LOGCAP contract in 2002.

3 Q Anything else?

4 A I think that's enough.

5 Q I'm not asking whether you think it's
6 enough. I'm asking whether there's any other basis
7 on which you think the U.S. Government owes you
8 money?

9 A I'm sure it goes into other departments and
10 other things but, you know, government auditors can't
11 even get a look at some of this stuff from KBR so I
12 guess it's just going to be -- just got to file a
13 claim and see where it goes. And I guess that will
14 kind of detail it and figure it out.

15 Q Now, what -- does KBR stand for something?

16 A Kellogg Brown & Root.

17 Q And you said something about log caps,
18 correct?

19 A Yes.

20 Q What does that mean?

21 A That's the logistics contract that KBR won
22 in December of 2001 right after the 9/11 incident to
23 supply the military with logistic support for various
24 products, food, restaurant supplies, gasoline, things
25 like that in areas of operations.

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1 Q Okay. And you believe the U.S. Government
2 is using something that you authored in order to

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3 perform that contract?

4 A Yes.

5 Q Or that Kellogg Brown & Root is using
6 something you authored to perform their contract?

7 A I'm not sure how that would work. Kellogg
8 Brown & Root charged the government a large amount of
9 money for an access database produced to the United
10 States Government they claim to be proprietary and
11 secretive. So they'll sort it out somehow I'm sure.

12 Q Okay. Is this a lawsuit that you're
13 planning on filing soon?

14 A Yes.

15 Q Are you planning on filing it in Hawaii?

16 A No. It will be in the U.S. Court of Claims.

17 Q Okay. 22. Document reflecting transfers of
18 real property by you within the last five years.

19 A If I understand the definition of real
20 property, I don't believe there are -- I had any to
21 transfer. There's no transfers.

22 Q So you have made no transfers of real
23 property in the last five years?

24 A Not that I'm aware of.

25 Q Do you own any real property today?

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1 A Not that I'm aware.

2 Q 23. Gift tax returns for the last five
3 years.

4 A I don't have any.

5 Q Have you made any gifts to anyone in the
6 last five years?

7 A Not that I'm aware of.

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8 Q You made any loans to anyone in the last
9 five years?

10 A Not that I can recall.

11 Q All partnership agreements in which you are
12 either a general partner or limited partner.

13 A I don't believe I've entered into any
14 partnership agreements.

15 Q So as far as you know, you're not a party to
16 any partnership agreement today?

17 A I don't think so.

18 Q What about with Alan Sinesky?

19 A There's no partnership agreements.

20 Q Do you have any co-venture arrangements with
21 Mr. Sinesky at all?

22 MR. HOGAN: Objection, vague as to the term
23 co-venture. Calls for a legal conclusion.

24 Q (By Mr. Smith) You may answer to the extent
25 you understand.

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1 A There's no co-venture agreements of any kind
2 between him and me.

3 Q 25. Any contracts between you and anyone
4 else including but not limited to the government for
5 any works performed by you under which you are owed
6 any money?

7 A I don't think there are any.

8 Q There are none other than Y. Hata?

9 A I don't believe so. That's correct.

10 Q Number 26. All contracts between you and
11 any other person including but not limited to the

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12 government for any work that you are currently
13 performing?

14 A There are none.

15 Q Now, you have, in the past, worked on a lot
16 of different software projects, right?

17 A Over my lifetime, yes.

18 Q Right. And sometimes it's on your shoulders
19 to create something and then demonstrate the project
20 and get a sale for it, right?

21 A Yes.

22 Q That's how you made your living, right?

23 A Yes.

24 Q Is that still how you make your living?

25 A Yes.

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1 Q Okay. So what projects have you worked on
2 like that in the last five years?

3 A Nothing -- for a demonstration purpose? The
4 only ones I can think of is I've done variance of the
5 freight control system like with Horizon Lines on
6 some of the EDI stuff. Some has worked, some hasn't.
7 They're not quite up to speed on certain things. I
8 was looking at that and talking to some of the food
9 vendors as a variant of the freight control system to
10 work for them for placing direction orders.

11 Q Okay. So you have made some kind of a
12 proposal to Horizon Lines within the last five years?

13 A No, no, nothing that formal. I've worked
14 with their EDI by sorting out different transaction
15 sets that they were bringing on-line because they've
16 been going through a lot of rewrites and changes.

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17 Q Okay. I'm not asking about whether it was
18 formal or not. Have you approached Horizon Lines
19 about the possibility of your doing business with
20 them?

21 MR. HOGAN: I'm going to just make a
22 statement. I'm putting this under the protective
23 order sealed. He'll tell you how to do it. I
24 believe this is -- you have every right to find out
25 if you can collect your judgment. I believe this is

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1 intentionally intended to harm a competitor of your
2 client and I'm going to just impose an objection.

3 Go ahead.

4 THE WITNESS: Not so much to do business
5 with them. It's more -- well, it would have been --
6 some of these things that didn't quite come together
7 would have been nice for Y. Hata's benefit. And it
8 would have been no a charge thing for them. But
9 these EDI transactions that's -- Horizon has been
10 changing roughly would mean for them doing this
11 stuff -- kind of thing.

12 Anyway, I saw it as if I could work with
13 them, finish some of these things, then I could do
14 what you're talking about. Not necessarily a
15 proposal to Horizon but more with a proposal like
16 going back to one of the food vendors or something.

17 Q (By Mr. Smith) Okay. So you haven't made
18 any proposal to Horizon to do business with them?

19 A No. It was more of a preliminary working
20 with them on things in anticipation of making

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21 proposals to other people.

22 Q And Horizon has never made any offers to you
23 to license any product or buy any product from you?

24 A They don't need my stuff.

25 Q Okay. So but the answer to my question is

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1 correct, they've never made such an offer, right?

2 A No.

3 Q Now, you've mentioned various food vendors.
4 Have any food vendors other than Y. Hata been
5 approached by you in the last five years regarding
6 doing business with you?

7 A I think Foodland falls in that time frame.

8 Q Okay. Any others?

9 A Approached me or approached them or either?

10 Q Either.

11 A There were a couple. I just can't remember
12 their names.

13 Q Okay. In Foodland's case, there was never
14 any agreement reached to do business between you and
15 Foodland, is that right?

16 A We never did business.

17 Q Okay. And regarding a couple of other food
18 vendors that you talked to, you never did business
19 with them either?

20 A No.

21 Q Have you had any discussion with anybody
22 else regarding the possibility of you doing business
23 with them over the past five years?

24 A There's always discussion. I can't remember
25 all of them. More recently there's -- as an example,

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1 there's some consultants from U.S. Customs and Border
2 Patrol that contract out that a freight control
3 system might fit in. There were some discussions
4 there.

5 There's been some discussions regarding some
6 stuff regarding Sarbanes-Oxley compliance on
7 transferring EDI employee data for large companies
8 between HMOs. Gets a little out of my league. The
9 EDI stuff I could do pretty easily. They want to do
10 business talks or -- there's always interest and
11 inquiries on a fairly regular basis. Could be as
12 high as 20 or 30 a month for that kind of stuff.
13 Most of them don't go anywhere. They -- sometimes
14 they have some interest but haven't so far.

15 Q So you get 20 to 30 inquiries per month from
16 people interested in the possibility of doing
17 business with you?

18 A Since I've been in Florida, yes.

19 Q That's only since you've been in Florida?

20 A Yes.

21 Q To what do you attribute -- is this an
22 increase over the number of inquiries you received
23 when you were in Hawaii?

24 A Oh, yes.

25 Q To what do you attribute the increase?

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1 A You're not there. How's that?

2 Q It's that I am not in Florida?

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3 A I think that's a nice way of saying it, yes.

4 MR. HOGAN: Not yet.

5 Q (By Mr. Smith) Okay. And so this -- and
6 this 20 to 30 per month goes over the past 12 months
7 or so?

8 A On and off, it goes up and down, you know.
9 Just --

10 Q And despite all of those inquiries -- so
11 that's over a course of a year that's several hundred
12 inquiries, right?

13 A Easily, yes.

14 Q And how -- is it correct that none of those
15 inquiries has resulted in any business being done
16 between you and the parties that inquired?

17 A That's true. And it's mostly my fault in
18 that area.

19 Q And why is it your fault?

20 A There's been medical issues regarding
21 Sally's parents and she just got out of the hospital
22 and things like that. So most of these inquiries
23 come anywhere from like New York through Dallas up
24 through Chicago, State of Washington, in Florida,
25 Virginia, North Carolina, all over the place.

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1 This is contract type work. Anywhere from
2 three months to six months. Short term, high pay, do
3 certain specialized things and then you get out. And
4 it takes money to go do it. I have to travel doing
5 initial one or two-week deal, come home, finish my
6 work, return, do an installation. And I just haven't
7 had that kind of time where I could be away during

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8 this year so far. But it looks very good for the
9 future.

10 Q Okay. So have you been offered work?

11 A Yes.

12 Q Okay. And who has offered you work over the
13 last year?

14 A Like I say, these inquiries now. Out of the
15 20 or 30 in a month, I might respond to maybe only
16 three or four because, you know, look at them, check
17 the companies out, see what they're doing and respond
18 to them it looks good. And, you know, it's just
19 something I haven't been able to, for my own personal
20 time, do anything.

21 Q Do you have an understanding of the
22 difference between an inquiry and an offer?

23 A Obviously not from where you're going with
24 this but go ahead.

25 Q Okay. Well, I guess when you say inquiry,

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1 it sounds like there's some preliminary discussion
2 where an offer would be or someone is actually
3 telling you they're prepared to pay you for doing
4 certain things.

5 A Well, in a contract program especially in
6 high end stuff when you're doing EDI, Biztalk, things
7 like that for customers, specifically you want to put
8 a cog to make a big machine work a different way.
9 It's very different.

10 offer and acceptances, customers will have a
11 budget. And they'll say hey, we got 30 grand, we

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12 need this done in 90 days. Can you do it? And you
13 go look at the company, figure it out, come back and
14 say either you think you can or you think you can't.
15 There's not a lot of discussion.

16 Q Alright. So have you responded to anybody
17 telling them that you think you can do what they want
18 to?

19 A No. Basically for the reasons I've told
20 you. I've said I could do it but I'm not in a
21 position to commit that kind of time and resources
22 and travel right now.

23 Q So you haven't responded with willingness to
24 do any of the work that anybody has approached you?

25 A Yes, I have. I'm going to go back and talk

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1 to them again when I am free and clear to do it.

2 Q Who are the parties that you have
3 responded --

4 A I don't know. They're written down in a
5 note pad or in an e-mail.

6 Q Please state to the best of your
7 recollection the names of the parties that you have
8 responded favorably to.

9 A I don't know because they're -- a lot of
10 them, they're headhunter type people where, you know,
11 companies pay them and contract them to go find
12 people. I can't recall the names off the top of my
13 head.

14 Q You're not able to identify a single one of
15 those parties as you sit here today?

16 A No, no.

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17 Q And you have not produced any documents from
18 any of those parties as you sit here today?

19 MR. HOGAN: Objection, he's not asked to
20 produce.

21 Q (By Mr. Smith) I'm not trying to get into a
22 debate over that. I just want to know is anything
23 from any of those parties contained in what you
24 produced today?

25 A No.

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1 MR. SMITH: Okay. Let's take five minutes.
2 My three hours are running fast.

3 (Recess taken.)

4 Q (By Mr. Smith) I would like to go back to
5 the bank statement you provided from the bank in
6 Florida. Your testimony again is that you produced
7 all the records that you had from Bank Atlantic,
8 right?

9 A Yes.

10 Q So if we look at page 31 on the right hand
11 side, it says page 1 enclosures 2. What are the
12 enclosures that are referred to there?

13 A I don't know. I usually don't keep the
14 first page.

15 Q You threw the rest of the statement out?

16 A Yes.

17 Q As well as any enclosures?

18 A Yes.

19 Q Was there more than one statement or one
20 page of this statement?

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21 A I don't know. I'm usually after this thing
22 where it's got the summaries and balances like I can
23 see what all that is.

24 Q So you started with a balance of \$64,147.95,
25 correct?

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1 A Okay.

2 Q As of April 17, right?

3 A Where do you see the April 17? At the top
4 there, okay.

5 Q And then it says debits of \$25,295.19?

6 A Okay.

7 Q Where is the portion of the statement that
8 identifies the debits?

9 A I don't know.

10 Q You don't know so you don't have it in your
11 possession?

12 A This is -- no. This is all I had in the
13 stack of papers.

14 Q Is it your testimony you threw out the rest
15 of the statement that identified what the debits you
16 had made?

17 A I most likely did, yes. I didn't find it,
18 produce it. Or else I would have scanned it in too.

19 Q Okay. And page 32 is again page 1
20 enclosures 2. And my question again is where are the
21 enclosures?

22 A I don't know. This is the only page I had.

23 Q What are the debits? Can you just tell me
24 what were the amounts that came out of this account
25 of \$25,820? That's in the month for May 17 to June

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1 17, 2007. where did that money go?

2 A I don't know.

3 Q You're not able to say what happened to any
4 of that \$25,870?

5 A Not offhand, no.

6 Q what about the 25,295 that was expended from
7 April 17 to May 17 out of this account?

8 A I don't know.

9 Q what are the enclosures that come with your
10 bank statements?

11 A I don't know.

12 Q Okay.

13 A I don't look at them.

14 Q You don't look at them and you don't know
15 what you spent your money on during those two months?

16 A Not as we sit here, no.

17 Q Do you have any records that would reflect
18 what you spent your money on?

19 A No. I would have produced them.

20 Q Does Bank Atlantic provide your cancelled
21 checks with your statements?

22 A No. I think most banks hold those now.

23 Q I'm not asking about what most banks do.

24 A I don't -- they don't send them to me so I
25 assume they have them.

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1 MR. HOGAN: They shred them.

2 Q (By Mr. Smith) So -- but your testimony is

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3 that Bank Atlantic does not provide your cancelled
4 checks to you?

5 A I haven't seen any. So no, I don't think
6 they do.

7 Q Okay. Same question regarding what you've
8 produced that's numbered page 33.

9 A That would be the same set of answers for
10 the previous two pages.

11 Q You've got total debits of \$20,269?

12 A Right.

13 Q Where did that money go?

14 A I don't know.

15 Q Where are the records that reflect where
16 that money went?

17 A I don't have them. I'd imagine they'd be at
18 the bank.

19 Q And what did you do with the rest of the
20 paper that came with this page that's numbered 33?

21 A Wasn't with this page I copied. So I would
22 assume I threw it out.

23 Q And your testimony is the same regarding the
24 page that's numbered 34?

25 A You skipped a page, yes.

8
†

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1 Q I think I did ask -- I think I was asking
2 about 33.

3 A Okay. It would be the same for all four of
4 those --

5 MR. SMITH: well, let me just add to my
6 statement earlier that the records are incomplete.
7 That each of these bank statements that's been

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8 produced is incomplete also and my rights are
9 reserved for the same purpose.

10 MR. HOGAN: well, let me put on the record
11 that he has produced the documents in his possession.
12 That is all he's required to do. If you want to go
13 and get the bank records, why don't you get on your
14 little horse and go get the bank to give them to you
15 instead of sitting here trying to further prejudice a
16 guy who has traveled 5,000 miles to be with you
17 today. I think you've now crossed into the world of
18 judgment debtor harassment for the second time.

19 Q (By Mr. Smith) Mr. Berry, you have produced
20 a copy of a 2003 agreement with Y. Hata, is that
21 correct?

22 A Yes.

23 Q Now, has that been amended?

24 A Not that I'm aware of.

25 Q what is the agreement that is currently in

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1 force between you and Y. Hata? Just summarize the
2 terms please.

3 A I don't know.

4 Q what do you agree to do and what do they
5 agree to do?

6 A I think this is the agreement basically
7 right here.

8 Q I'm just asking you to summarize what you do
9 for them and what they do for you.

10 MR. HOGAN: Objection, the document speaks
11 for itself.

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12 Q (By Mr. Smith) You may answer.

13 A I wrote a new freight control system that
14 was being used to manage their freight.

15 Q I understand that. Do they have a license
16 to use your -- you granted them a license to use
17 software that you created, right?

18 A Yes.

19 Q Is there anything else that -- any other
20 agreement or arrangement between you and Y. Hata
21 besides their holding a license that entitled them to
22 use software you created?

23 A Only in the form of advising them or
24 answering questions to them regarding freight or --

25 Q Anything else that you do for Y. Hata

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1 besides advise them and answer questions?

2 A No. And the freight software. That's about
3 it.

4 Q Well, you said and the freight software.
5 Is -- when you say the freight software, is there
6 anything to that agreement other than you're giving
7 them permission to use the software?

8 A That's a standard license agreement.

9 Q So they're licensed to use it and you give
10 them advice and you answer their questions, correct?

11 A Yes.

12 Q Anything else that you do for Y. Hata?

13 A I think that's it.

14 Q Okay. How many hours a day do you spend
15 advising Y. Hata?

16 A Viewing stuff, looking at things, a couple.

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17 Q About two hours a day?
18 A About.
19 Q Is -- does that include the time you also
20 spend answering questions?
21 A Probably.
22 Q How many days a week?
23 A I'd say typically five.
24 Q Monday through Friday typically?
25 A As far as interacting with them or anyone.

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1 Q Okay. I'd like to make this exhibit the
2 next exhibit in order. We'll take care of that in a
3 minute.
4 MS. BRONSTER: I just want to know which
5 number this was in.
6 Q (By Mr. Smith) Do you recognize the Exhibit
7 B which has been put in front of you?
8 A I think I've seen this, yes.
9 Q Did you see it before it was signed and
10 sent?
11 A I think I did.
12 Q And did you approve of its contents?
13 A Yes.
14 Q So I'm interested in the paragraph at the
15 bottom of page 2.
16 A Okay.
17 Q It says that you provide freight logistic
18 services to Y. Hata, Ltd. and have no staff and
19 therefore need to be engaged Monday through Saturday.
20 A Right.

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21 Q Is that true?

22 A Yes.

23 Q Now, do you need to be engaged for only two
24 hours a day or do you need to be available all day to
25 provide advice and answer questions?

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1 A I try to be available 24 hours a day, seven
2 days a week and sometimes they take advantage of it
3 too.

4 Q In order to meet your obligation to Y. Hata,
5 what hours do you need to be available to them?

6 A As I would anybody I do business with, I
7 need to be available to them, you know, when they
8 need me and they usually operate on Monday through
9 Saturday.

10 Q Okay. So you agree that you would not be
11 able to appear for a deposition because of your
12 obligation to Y. Hata?

13 A Oh, yeah. Today was very, very difficult.

14 Q Okay. See I'm just trying to understand
15 whether -- how the two hours a day fits with the
16 testimony you're giving.

17 A You're always getting into this nonsense
18 about nit-picking this thing 'cause you don't even
19 keep your time records right. You hide them when you
20 send the goons out. But you have to understand
21 there's more to it than that. When you're working on
22 programs, you implement changes. Sometimes you have
23 to sit there and you got to baby-sit changes for
24 three weeks before you know it's going to work.

25 Q All I want to know is do you need to be